

## **REMARKS**

The Office Action mailed 26 June 2007 has been carefully reviewed and, in view of the above amendments and following remarks, reconsideration and allowance of the application are respectfully requested.

### **I. Claims Summary**

Claims 1, 4-13, and 15-17 are currently pending in the application, with claims 1 and 10 being independent claims. Claims 2-3, 14, and 18-46 are cancelled and claims 1, 4, 10, and 15 are amended, in accordance with the above amendments.

### **II. Office Action Summary**

The following claim rejections were submitted by the Examiner in the outstanding Office Action:

- Claims 1-2, 4-7, and 9-15 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication 2005/0028403 to Swigart, et al.;
- Claims 3 and 16-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over a combination of Swigart and U.S. Patent Application Publication 2005/0132606 to Passke, et al.; and
- Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over a combination of Swigart and U.S. Patent Application Publication 6,192,606 to Pavone.

In addition, the Office Action provisionally-rejects claims 1-17 on the ground of nonstatutory obviousness-type double patenting,

### **III. Discussion of Independent Claim 1**

Independent claim 1 recites a component that includes a bladder and a reinforcing structure. The bladder is formed of a barrier material and encloses a fluid that exerts an outward force upon the barrier material. The bladder includes a first surface, an opposite second surface, and a sidewall extending between the first surface and the second surface. In addition, the bladder has a plurality of interior bonds that

join the first surface with the second surface, and the interior bonds are spaced inward from the sidewall. The reinforcing structure is at least partially recessed into the barrier material and bonded to the barrier material. At least a portion of the reinforcing structure is placed in tension by the outward force upon the barrier material.

As amended, independent claim 1 substantially incorporates the recitations of each of dependent claims 2 and 3 (which are now cancelled). The Office Action rejects dependent claim 3 as being obvious over a combination of Swigart and Passke. Accordingly, the combination of Swigart and Passke will be discussed in relation to independent claim 1.

### *Teaching Away*

Prior art references must be considered in their entirety (i.e., as a whole), including disclosures that teach away from the claimed invention (MPEP §2141.02, section VI). Swigart discloses a cushioning component for an article of footwear. The component includes a chamber and covering elements that extend over opposite surfaces of the chamber. According to Swigart:

The relatively low pressure permits the first surface and the second surface to retain a desired shape without the internal connections between the first surface and the second surface. That is, the relatively low pressure permits the first surface and the second surface to have a flat or curved shape without the need for tensile members located within the chamber that restrain outward movement in some pressurized chambers (Swigart, paragraph 17).

In contrast with a majority of the prior art chamber structures, however, the fluid within chamber 50 is at ambient pressure or at a pressure that is slightly elevated from ambient (Swigart, paragraph 44).... The relatively high pressure in prior art chambers often requires the formation of a plurality of internal connections between the polymer layers to prevent the chamber from expanding outward to a significant degree. That is, internal

connections were utilized in prior art chambers to control overall thickness of the chambers, but also had the effect of limiting compression of the prior art chambers. In contrast, chamber 50 does not have internal connections between first surface 51 and second surface 52 due to the relatively low pressure, thereby permitting a greater degree of compression (Swigart, paragraph 45).

Based upon these excerpts, Swigart teaches away from a configuration wherein internal connections are utilized in a chamber to prevent the chamber from expanding outward. According to Swigart, a configuration that does not include internal connections has the advantage of providing a greater degree of compression.

The rejection of dependent claim 3 (now combined with independent claim 1) states that it would be obvious to have provided a plurality of interior bonds that join surfaces of the bladder in Swigart, as taught by Passke (Office Action mailed 26 June 2007, pages 6-7). The above discussion, however, indicates that Swigart teaches away from a configuration wherein internal connections (i.e., interior bonds) are utilized. That is, Swigart teaches away from a combination of Swigart and Passke for purposes of incorporating interior bonds into the bladder of Swigart.

### *Limitations*

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131). Similarly, to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (MPEP § 2143.03). Whether rejected over Swigart alone or the combination of Swigart and Passke, the references do not teach or suggest a configuration wherein at least a portion of the reinforcing structure is placed in tension by the outward force upon the barrier material.

The general procedure for forming the cushioning component of Swigart is disclosed as initially forming the chamber (see Swigart, paragraph 46), forming the covering elements (see Swigart, paragraph 52), and then securing the covering elements to the chamber (see Swigart, paragraph 52). In contrast with this disclosure in

Swigart, independent claim 1 recites that (a) the bladder encloses a fluid that exerts an outward force upon the barrier material and (b) at least a portion of the reinforcing structure is placed in tension by the outward force upon the barrier material.

For purposes of understanding, the Applicants would like to present an analogy: If a piece of adhesive tape is bonded to a balloon prior to inflation, then the tape will be placed in tension as the balloon is inflated and the material of the balloon expands. If, however, the piece of tape is bonded to the balloon following inflation, then the tape will generally be in a non-tensioned state. With reference to the above discussion of Swigart, it is apparent that the chamber is first manufactured and the covering elements are then added. The chamber is, therefore, manufactured prior to securing the covering elements to the chamber. As with the tape analogy, this manufacturing method likely results in a configuration wherein the covering elements are in a non-tensioned state. Moreover, this manufacturing method likely results in a configuration wherein the covering elements are not placed in tension by an outward force from the fluid upon the chamber.

Furthermore, manufacturing steps that would be required to modify Swigart to place the covering elements in tension are not taught or suggested by Swigart. If, for example, the covering elements are in tension, then the covering elements may have to be secured to the chamber material prior to the introduction of a fluid into the chamber. As with the tape analogy, no tension results unless the two elements are secured together prior to inflation. If, as another example, the chamber is inflated prior to joining of the covering elements, then the chamber would have to be compressed such that uncompression of the chamber results in tension in the covering elements. Neither of these steps are taught or suggested by Swigart.

As a further matter, Swigart does not teach or suggest a need for placing the covering elements in tension. Moreover, the covering elements are not necessary to impart or retain a shape to the chamber. In the present application, however, tension in the reinforcing structure restrains distension of the sidewall of the bladder.

Based upon the above discussion, the Applicants respectfully submit that independent claim 1 is allowable over the rejections of record. In addition, dependent claims 4-9 should be allowable for at least the same reasons.

#### **IV. Discussion of Independent Claim 10**

Independent claim 10 recites a component that includes a bladder and a reinforcing structure. The bladder is formed of a flexible barrier material that encloses a pressurized fluid. In addition, the bladder includes a first surface, an opposite second surface, and a sidewall extending between the first surface and the second surface. The reinforcing structure extends around at least a portion of the bladder and is at least partially recessed into the barrier material of the sidewall. The reinforcing structure is substantially absent from each of the first surface and the second surface to expose a majority of the barrier material forming each of the first surface and the second surface. In addition, the reinforcing structure is formed of a semi-rigid material that is bonded to the bladder.

The Office Action rejects independent claim 10 as being anticipated by Swigart. A claim is anticipated, however, only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131). Swigart, however, does not teach or suggest a configuration wherein the covering elements are substantially absent from surfaces to expose a majority of the barrier material forming the surfaces. More particularly, the covering elements of Swigart cover substantially all of the first surface and the opposite second surface of the bladder. In contrast with independent claim 10, therefore, the covering elements do not expose a majority of the barrier material forming the surfaces.

Based upon the above discussion, the Applicants respectfully submit that independent claim 10 is allowable over Swigart. In addition, dependent claims 11-17 should be allowable for at least the same reasons.

#### **V. Discussion of Double Patenting Rejections**

The double patenting rejections are noted as being provisional. Although the Applicants respectfully traverse the double patenting rejections, the Applicants will defer discussion of these rejections until the rejections are made non-provisional.

#### **VI. Discussion of Restriction**

Although the Applicants respectfully traverse the Examiner's conclusion regarding the election of species requirement, claims 18-46 are cancelled. The Applicants reserve, however, the right to file divisional applications to the non-elected species in the cancelled claims.

#### **VII. Conclusion**


In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being timely filed on September 24, 2007. Should fees be deemed necessary for consideration of this Amendment, such fees are hereby requested and the Commissioner is authorized to charge deposit account number 502846 for payment. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at 503.222.5382.

Plumsea Law Group, LLC  
10411 Motor City Drive, Suite 320  
Bethesda, MD 20817  
Telephone: 301.365.9040

Dated: 24 September 2007

Respectfully Submitted,

  
By: Byron S. Kuzara  
Registration Number 51,255